

March 27, 2003

VIA HAND DELIVERY

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

***Re: Petition of the Cape Light Compact Regarding Certain Disputes with
Commonwealth Electric Company d/b/a NSTAR Electric Pertaining to
Administration and Conduct of the Cape Light Compact's Energy
Efficiency Plan, DTE 03-33***

Dear Secretary Cottrell:

The Cape Light Compact (the "Compact") hereby submits its reply ("Reply") to the March 21, 2003 response ("Response") of Commonwealth Electric Company d/b/a NSTAR Electric ("NSTAR") to the "Petition of the Cape Light Compact Regarding Certain Disputes with Commonwealth Electric Company d/b/a NSTAR Electric Pertaining to Administration and Conduct of the Cape Light Compact's Energy Efficiency Plan" (the "Petition"). (The Compact and NSTAR are referred to together in this Reply as the "Parties.")

In its Petition, the Compact asked the Department of Telecommunications and Energy (the "Department") to order NSTAR to provide the Compact with the customer telephone number data to which it is entitled as a Program Administrator of energy efficiency services, and to enter into the proposed Operating Agreement concerning the transfer of data, information, and funding necessary for the implementation of the Compact's Energy Efficiency Plan ("EEP"). In its Response, NSTAR indicated that it would only provide the Compact with customer telephone numbers if the Compact did not use the data for "solicitation purposes," and also asserted that Department involvement concerning the proposed Operating Agreement was premature. In this Reply, the Compact reiterates the requests contained in its Petition, and hereby submits that NSTAR's Response does not accurately reflect the situation between the Parties, for the reasons set forth below.

I. CUSTOMER TELEPHONE NUMBER DATA

As stated in its Petition, the Compact and NSTAR are co-equals as Program Administrators, and as such, NSTAR has no right to restrict the Compact's access to customer telephone number data. By refusing to provide the Compact with this information, NSTAR is incorrectly treating the Compact as a subordinate program vendor. The Department should, therefore, clarify the status of the Parties as co-equals, and order NSTAR to immediately provide the Compact with customer telephone number information.

In its Response, NSTAR refused to provide customer telephone numbers for "marketing or solicitation purposes." Response at 3. However, NSTAR stated that it would provide the Compact with customer telephone numbers for the purposes of indexing the database of customers, scheduling energy efficiency audit requests, determining compliance with follow-up surveys, evaluating energy efficiency services, and providing information to customers concerning the Compact's energy efficiency programs. Although the Compact reiterates that it may use customer telephone number data for all legal purposes, NSTAR's position on the "solicitation" issue is logically inconsistent. It is unclear how "providing information to customers concerning the Compact's energy efficiency programs" would not also be viewed as "marketing and solicitation." Practically speaking, a situation could also arise where a call made to a customer for one reason could easily develop into an opportunity to "solicit" that customer for additional energy efficiency services. For example, a vendor could call a customer to confirm an energy efficiency audit. While speaking on the telephone, the customer could ask for additional information on Compact programs, or the vendor could volunteer that information. At this point, NSTAR would have the vendor hang up the phone, rather than "market" energy efficiency services to a customer. Compact vendors intend to use customer telephone number information to "cold call" customers and provide them with information concerning energy efficiency programs and services. Given the fact that Compact and energy efficiency program vendors have reported significantly higher success rates when using phone calls (seventy five percent), as opposed to mailings (fifteen percent), cold call solicitations are an important mechanism for reaching consumers.

NSTAR's suggestion that the Compact purchase customer telephone numbers from an outside source also is not an appropriate resolution of this matter, because such a purchase would be a wholly unnecessary waste of ratepayer funds in contravention of the principles of the Restructuring Act. See G.L. c. 25, §19 (ratepayer funds must be used in a "cost-effective" manner); St. 1997, c. 164. As NSTAR has already used ratepayer funding to compile telephone numbers for customers within the Compact's service territory, an additional payment by the Compact (also made from ratepayer funds) to acquire *those exact same numbers* would result in ratepayers being charged *two times* for the same information. Ratepayer funding for energy efficiency measures, which is already limited in quantity, should not be further reduced through such unnecessarily duplicative purchases. As ratepayer funds were used by NSTAR to compile the customer

telephone number data, the Compact is entitled to receive the information from NSTAR free of charge. The Compact believes that NSTAR is the only Massachusetts distribution company that is requiring its vendors to purchase customer telephone numbers from outside sources, thereby making the proposed “double payment” for information a unique and unjustified burden for ratepayers serviced by NSTAR. Under NSTAR’s new policy, even providers of low income energy efficiency services would be required to use ratepayer funding to purchase customer telephone numbers from NSTAR, thus reducing their capacity to serve the low income community.

Purchasing customer telephone numbers from third party sources is also an unacceptable solution, because data collected by third parties is not as accurate as data collected by NSTAR in its capacity as the distribution company. The Compact could expect to encounter a higher number of inaccuracies in data collected from other sources, and would then be forced to expend additional ratepayer funds to correct third party mistakes. As the original collector of the customer telephone number data, NSTAR is in the best position to ensure that the data is accurate and complete. Contrary to NSTAR’s assertion that the Compact “would eventually compile this information on its own” (Response at 2) the Compact states that it does not have the means to acquire this information itself, and it was never the understanding of the Parties that the Compact would do so. NSTAR’s speculative and completely unsupported assertion that the Compact would acquire the information on its own should not be given any weight by the Department.

NSTAR also contends that it cannot differentiate between published and unpublished numbers within its records, and that the costs to implement a system to do so would have significant cost ramifications. Response at 3. The Compact believes this argument to be disingenuous, because NSTAR periodically adds fields to its data to identify additional customer characteristics, and could easily do so to distinguish between published and unpublished telephone numbers.

II. PROPOSED OPERATING AGREEMENT

The Compact also reiterates its request that the Department order NSTAR to enter into the proposed Operating Agreement, and states that the Department’s involvement in this matter is not premature. Although NSTAR claims that it intends to move forward in negotiating the proposed Operating Agreement with the Compact, NSTAR has made no effort to correlate its actions with its promises on this matter. The Compact first provided NSTAR with a draft of the proposed Operating Agreement on December 9, 2002. Almost four months later, and despite the Compact’s repeated requests (as detailed in its Petition), NSTAR has never discussed the terms of the proposed Operating Agreement with the Compact, has not suggested any changes or additions to the Agreement, and has not committed to a timetable for finalizing the matter. The Compact’s Petition indisputably demonstrates this history. See Petition, Exhibit 2.

NSTAR's response here is not intellectually honest and is, at best, dilatory. Neither prospective Compact energy efficiency customers, nor NSTAR ratepayers, are well-served by such an approach. NSTAR must know that good faith implementation of these programs and responsiveness to consumers (such as the nearly two hundred thousand ratepayers it serves in the Compact's twenty-one towns) requires more. As the Transition Plan between the Parties expired by its own terms in December of 2002, the Department should order NSTAR to immediately enter into the proposed Operating Agreement. Since January 1, 2003, NSTAR and the Compact have been operating without an expressly binding written agreement. At best, this is a poor business practice for both Parties; the Compact wishes to have this matter resolved as soon as possible without further delay.

In conclusion, the Compact urges the Department to grant its Petition and submits that the Department should do so on the paper before it.

Thank you for your attention to this matter.

Sincerely yours,

Jeffrey M. Bernstein, Esq.
Elizabeth M. Heller, Esq.

JMB:EMH/mej
Enclosure

cc: Kevin Penders, Esq., Hearing officer (via hand delivery)
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